

INTERVIEW SUMMARY

Applicants wish to thank Examiner Jerry Cumberledge for the courtesy of two interviews granted to Applicants' attorney Maria Comninou on December 13 and 14, 2006 after a Final Office Action. During the interviews, the Examiner's interpretation of specific claim terms, including cam with "continuous curve with continuous slope" were discussed. Although no agreement was reached on language that would avoid the cited art, the Examiner offered suggestions for possible amendments to clarify these terms. The present Amendments generally follow the Examiner's suggestions.

REMARKS

Claims 1-21 and 37-41 are now pending in the application. Claims 22-36 and 42-44 are canceled without prejudice. The Examiner is respectfully requested to reconsider and withdraw the rejection in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lombardo et al. (U.S. Pat. Pub. No. 2004/0127896) in view of Konieczynski et al. (U.S. Pat. Pub. No. 2004/0127899). This rejection is respectfully traversed.

Claims 22-36 and 42-44 are canceled without prejudice and their rejection is now moot. The following remarks pertain to claims 1-21 and 37-41.

In the Final Office Action the Examiner re-iterates his previously stated position regarding the disclosures of Lombardo et al and Konieczynski et al. Applicants

incorporate by reference their arguments made in the Amendment filed in 9/20/2006 regarding this rejection, and make the following additional arguments based on their understanding of the Examiner's interpretation of the claim language.

The Office Action states that Lombardo et al does not disclose an expandable head member, and cites Konieczynski et al for disclosing an expandable head member. Therefore, regarding the other elements of the rejected claims, the arguments are made in view of the disclosures of Lombardo et al.

Independent claim 1 is amended to further clarify that both the outer and inner cams are circumferential, as opposed to longitudinal, precluding a possible broader interpretation, as suggested by the Examiner. Further, claim 1 clarifies that the head member is annular defining an internal surface and that the inner cam is defined by the internal surface of the head member. Each of the inner and outer cams are in the form of a continuous curve of continuous slope. Applicants maintain that "continuous slope" is an additional limitation over "continuous curve" and should be given weight. A continuous curve with a continuous slope cannot have discontinuities in slope. The curve is further characterized as devoid of kinks. The Examiner cites the Merriam-Webster Online Dictionary for the definition of "kink" as "a short tight twist or curl caused by doubling or winding something upon itself". One of the outer and inner cams of Lombardo include such "doubling or winding [of] something upon itself" as clearly shown in Figs. 15 and 19, and therefore they include kinks. The only possible mating portions of the washer and the fastener of Lombarddo are the following. The mating cam of the washer 108 is defined by track portions 128 defined in splays 127 of the washer 108. This cam, clearly has kinks, according to the above definition. Further, these track

portions are external to the washer, i.e. are not defined in the central opening 125 of the washer. The track portions receive discontinuous wedges 122 defined by tangs 120 of the head of the fastener. Therefore, the mating cam of the fastener is a discontinuous surface, and the mating cam of the washer has kinks, as defined above. Applicants respectfully submit that the detailed language of claim 1 does not allow a different reading of the disclosures of Lombardo et al. Therefore, claim 1 is patentable over Lombardo et al in view of Konieczynski et al.

Independent claim 17 is also amended to further clarify that both the outer and inner cam lobes are defined on circumferential surfaces, that the head member has an internal opening with an internal surface, and the head cam lobe is defined by the internal surface of the head member. The continuous curve of continuous slope is further characterized as devoid of kinks. For the reasons discussed above, claim 17 is patentable over Lombardo et al in view of Konieczynski et al.

Claims 2-16 ultimately depend from claim 1, and claims 18-21 ultimately depend from claim 17. Therefore, these claims are also patentable over Lombardo et al in view of Konieczynski et al, at least for this reason.

Regarding independent claim 37, the Examiner agrees that Lombardo et al fails to disclose an expandable head member that in a first position has a maximum diameter that is smaller than the first diameter of the fixation hole, and in the second position the expandable head member has a maximum diameter that is greater than the first diameter. The Examiner proposes that the expandable washer of Konieczynski et al can be used to provide this function. Applicants do not dispute that the prior art teaches expandable washers. Applicants, however, maintain that any expandable

member that can be used with Lombardo et al cannot be such that in a first position has a maximum diameter that is smaller than the first diameter of the fixation hole, and in the second position the expandable head member has a maximum diameter that is greater than the first diameter, as claim 37 recites, for the following reasons. In Lombardo et al, the head 20 of the bone screw is described as being sized such that it does not pass through the bone plate 12. See, for example, paragraph [0056], lines 7-8. The bone screws are inserted through apertures in the washers and can pass therethrough. See [0063] lines 4-15. Accordingly, the washers, whether expandable or not, cannot have a maximum diameter that is smaller than the diameter of the fixation hole in any position. Therefore, Lombardo et al is inoperable with and teaches away from washers (whether expandable or not) that have a maximum diameter that is smaller than the diameter of the fixation hole in any position, and cannot be combined with any other references to provide this elements. In other words, the proposed modification of the prior art of Lombardo et al cannot render the prior art unsatisfactory for its intended purpose, as that purpose is clearly described in Lombardo et al. See MPEP, 2143.01 (V), Eighth Edition revised August 2007, and citations therein. Accordingly, the Examiner has not met his burden of establishing a case of *prima facie* obviousness regarding claim 37. Therefore, claim 37, and claims 48-41 that ultimately depend from claim 37 are patentable over Lombardo et al in view of Konieczynski et al, at least for this reason.

Reconsideration and withdrawal of the rejections of claims 1-21 and 37-41 is respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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